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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/558,388	11/29/2005	Tadashi Hiramoto	Q114956	5709
23373 7590 02/19/2010 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER MEHTA, HONG T				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/558,388

Applicant(s)

HIRAMOTO ET AL.

Examiner

HONG MEHTA

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 20, 2010 has been entered.
2. Pending amended claims 32-47 are under examination.

Claim Objections

3. Claims 38, 39 and 40 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 41, 42 and 43. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. **Claims 32-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto (US 6,416,807 B1) in view of Zameitat et al. (US 3,438,785) and Lunder et al. (US 4,357,361).**

8. **Regarding claims 32-45**, Yamamoto discloses a mixed of fine powders for a beverage comprising first ingredient powder "extract" including kale, carrots, broccoli, celery "vegetable" or mandarin orange "fruit" ('807, col. 2, lines 46-58; col. 5, lines 15-20) and second ingredient powder, non- and/or semi-fermented tea, *Thae sinesis* ('807, col. 2, lines col. 4, lines 8-31) including green tea, black tea and oolong tea. Yamamoto

discloses extracts of vegetables, fruits and teas which are considered to have aroma properties.

9. Yamamoto does not disclose the treatments of the tea powder and combined extracts of vegetable or fruit extract with tea powder as cited in the instant claims.

10. However, Zameitat et al. discloses a soluble tea powder from freshly plucked green tea leaves ('785, col. 7, lines 39-40) in the process with tea leaves and water to form a slurry to obtain a resulting tea extract ('785, col. 7, lines 70-71) and tea aroma (col. 7, lines 25-35). Zameitat et al. discusses processing of green tea leaves, which is tea plant variety of species *Camellia sinensis*, including plucking fresh green tea leaves, withering at the processing plant, and physically damaging by rolling with Rotovane machines, fermenting approximately for 1 1/4 hours ('785, col. 7, lines 45-62).

11. Additionally, Lunder et al. discloses a preparation of soluble tea powder extract with combined ingredients of vegetable materials including hibiscus flower, rosehips, peppermint and orange blossoms with black tea ('361, col. 1, lines 35-41). Lunder et al. disclose an infusion period of black tea with vegetable materials at ambient temperatures, 10°C to 40°C for 10 to 40 minutes ('361, col. 1, lines 56-68) and longer period of time is possible if desirable. Lunder et al. discloses a heat treatment after the infusion period at temperature range of 80°C and preferably from 90°C to 100°C ('361, col. 2, lines 9-17).

12. It would have been obvious to one of ordinary skill in the art at the time of the invention to use Zameitat's tea powder and Lunder's temperature ranges and time

period of extracts in Yamamoto's mixture. Zameitat's tea powder is cost effective to produce ('785, col. 1, lines 45-60) and improves fresh flavor tea infusion ('785, col. 1, lines 40-44). Additionally, Lunder clearly teaches temperature ranges and time period to achieve a successful contact of tea material and vegetable material in water "slurry" (col. 1, lines 30-33). It would have been obvious to one of ordinary skill in the art to use Zameitat's tea powder and Lunder's temperature ranges and time period of extracts in Yamamoto's mixture for a cost effective and improved flavor profile in soluble tea extract.

13. The process of *Camellia sinensis* tea leaf powder and treatment of combined extracts of vegetable, tea, fruit, flowers with tea leaf powder is considered a process limitation. "[E]ven though the product-by-process claims are limited by and defined by the process, determination of the patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product in the product-by-process claim is the same as obvious from the product of the prior art, the claim is unpatentable even though the prior product was made by a different process." (In re Thorpe, 227 USPQ 964,966). Additionally, methods of Zameitat and Lunder bear similarity to that of the instant claims in that the tea leaves are physically damaged, processed, fermented and temperature treatments of combined extracts and tea powder in slurry. Absent a showing otherwise, the final product of the tea powder and temperature treatments in extraction of the prior art is not considered to be structurally different from that of the claims.

14. **Regarding claims 44 and 45**, Zameitat et al. discloses a tea beverage is made from the soluble tea powder (col. 8, lines 5-6) comprising tea extract and tea aroma.

15. **Claims 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto (US 6,416,807 B1), Zameitat et al. (US 3,438,785) and Lunder et al. (US 4,357,361) as applied to claims 32-45 above, and further in view of McCook et al. (US 5,306,486 A).**

16. Yamamoto (US 6,416,807 B1), Zameitat et al. (US 3,438,785) and Lunder et al. disclose the claimed invention as discussed above. Zameitat et al. discloses the tea extract ('785, col. 70-71) and tea aroma ('785, col. 25-35) may be spray dried into dry powder ('785, col. 50-51).

17. Yamamoto, Zameitat et al. and Lunder et al. fail to disclose a cosmetic comprising the tea extract and tea aroma with aroma or extracts of vegetable, fruit or flower.

18. However, McCook et al. discloses the combination of green tea concentrate obtained from green leaves and water, followed by spray drying to obtain a green tea concentrate powder ('486, col. 2, lines 50-54) to be formulated into a sunscreen lotion comprising extracts and aroma from avocado oil ('486, col. 4, line 28), which is a considered a fruit and sunflower oil ('486, col. 4, line 27) which is considered a flower plant.

19. It would have been obvious to one skilled in the art to combine Yamamoto's tea powder as modified by Zameitat's tea powder and Lunder with McCook's cosmetic formulation of tea sunscreen

lotion. McCook's combination of green tea and sunscreen lotion compound provide better ultraviolet radiation protection than either substance separately ('486, col. 2, lines 31-44). It would have been obvious to one of ordinary skill in the art to combine Seltzer's or Zameitat's tea powder with its' anti-oxidative and inactivation of free radicals properties with McCook's sunscreen lotion to provide a more effective sunscreen lotion.

Response to Arguments

20. Applicant's arguments with respect to claim 32-47 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HONG MEHTA whose telephone number is (571)270-7093. The examiner can normally be reached on Monday thru Thursday, from 7:30 am to 4:30 pm EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Htm

/Jennifer McNeil/
Supervisory Patent Examiner, Art Unit 1794